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LEGAL INSTITUTE OF SECRECY IN THE DIGITALIZATION ERA: THEORETICAL AND PRACTICAL ASPECTS

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Abstract

Secrecy accompanies humanity from the moment of its birth. Everything that was not available for understanding was declared a secret. The value of information lies in the fact that humanity passes the "baggage" of accumulated knowledge and skills from one generation to another. In the modern world, information has become particularly important. Its value is an ephemeral concept. It has no universal value in itself. This category is closely related to the person using it and directly depends on purposes and methods of such use. Based on this, any assessment of the information value is related to the value of making decisions supported by such information. Today, the production of information requires investments of significant amounts of money, but the information itself does not always make a profit in monetary terms. It has intellectual, social, artistic, and practical values. The current level of the economy in our country and the whole world transforms timely and accurate information into a resource that ensures the successful development of business. Market relations only increase the importance of reliable, up-to-date and complete information. Some firms build their business on providing information services or protecting them. The economic significance of financial information also creates a need to protect it from unauthorized distribution and distortion, which can lead not only to significant financial losses, but also violations of constitutionally enshrined rights and freedoms. This area is regulated by the state, which establishes a legal regime for restricted access to confidential financial information at the legislative level.

Keywords: Information, economy, information, secrecy, personal data.

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1. Introduction

In the ancient society, the secrecy was deified, being something sacred. We can say that in the pre-state period of the human civilization, the secret was understood as something unknown, unsolved, and something that is beyond our control, and should not be known by uninitiated ones. And today the secrecy continues to exist: its new types are being formed to replace obsolete secrets – solved by modern mankind (Homo sapiens). And here the primary place should be given to science and scientists with the help of whom it became possible to reveal many secrets. As for jurisprudence, there have been no separate global studies on secrecy as a legal category.

2. Problem Statement

The author set himself a number of tasks:

- To analyze types of secrets enshrined in the Constitution of the Russian Federation (adopted 12.12.1993) and similar documents of the CIS countries, identifying their features;
- To review the legislation regulating the institution of secrecy in different countries;
- To conduct a comparative legal analysis of the institute of secrecy in the Russian legislation and the legislation of a number of CIS countries.

3. Research Questions

What is the legal nature of a secret? What factors determine the specifics of the legal regulation of the institute of secrecy in Russia? What factors determine the specifics of the legal regulation of the institute of secrecy in a number of countries of the Commonwealth of Independent States?

4. Purpose of the Study

The author defined the purpose of this study as an analytical review of legal documents regulating the institute of secrecy in the Russian legislation and the legislation of CIS countries. To identify specific features, a comparative analysis of legislative acts was carried out. Much attention is paid to this issue by scientists and experts, but in the general theory of law, the interest in it is limited. It should be noted that the institute of secrecy in the Russian legislation has been studied for a long time, but controversial issues still remain. All this determines the purpose and the scientific novelty of this study.

5. Research Methods

This research was carried out using a set of certain methods developed by methodologists for conducting general scientific research, as well as legal studies. The author used dialectical, formal-logical, comparative-legal methods, analysis and synthesis, etc. The use of these methods in their unity allowed making reasonable conclusions and conducting a study on the selected topic.

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6. Findings

In the modern Constitution of the Russian Federation (adopted 12.12.1993), the concept of secrecy is fixed by the legislator in three norms. The basic Russian law establishes the right of a person and a citizen to personal and family secrecy (part 1 of Article 23), the secrecy of correspondence, telephone conversations, postal, telegraph and other messages (part 2 of Article 23). The provisions on the secrecy protection apply to state secrets (part 4 of Article 29). As we can see, the list of messages types that are subject to the secrecy regime (established in Art. 23 of the Constitution) is open, which allows expanding it, for example, including SMM messages, messages via the Internet, e-mails, and other messages there. The Constitution of the Russian Federation (adopted 12.12.1993) protects the natural desire of any person to preserve their personal and business world from prying eyes. There is a division of information with a secret regime into personal information that is not trusted anyone and professional information – this is such information that, due to various circumstances, has been entrusted by its rightholder to representatives of various professions – doctors, lawyers, notaries, priests). Such a regime is not absolute, it can be removed from the information in cases directly specified in the legislation: if it is required by the fight against crimes; if it is related to the protection of citizens' health; and in cases of a state of emergency or martial law on the entire territory of Russia or a certain part of it.

In fact, every day we are faced with various manifestations of the digitalization. It is gaining momentum and becoming an integral part of the life of almost every person. We can say that digitalization is a new approach to using existing digital resources to achieve the most efficient and optimized work of various organizations. This phenomenon covers not only the economic but also the legal sphere on a global scale. Digitalization regulates social relationships, keeping up with current trends that are steadily leading the entire society to transformation. Despite the fact that there are really important advantages and prospects in the field of the society digitalization, which makes our life easier by improving technologies and many economic processes, there are certainly risks in this sphere. First of all, constitutional human rights are under threat. Due to the growing opposition of the right to information freedom, enshrined in paragraphs 4 and 5 of Article 29 of the Constitution of the Russian Federation (adopted 12.12.1993), and the right to privacy, enshrined in paragraph 1 of Article 23 of the Constitution of the Russian Federation (adopted 12.12.1993), relations in the field of digitalization already need not just the adaptation of legislation to this phenomenon, but also the creation of new rules that can successfully regulate these public relations and stabilize the current situation (Talapina, 2018). First of all, the "risk zone" contains person's personal data, which is often found in the possession of certain third parties who skillfully use this information for selfish illegal purposes. We should also note the increase in the amount of information that fills the Internet, which needs a certain kind of filtering by public authorities (Bolgova, Cherevichenko, Azarkhin, Sidorova, & Efremova, 2020). Some of the endless streams of information that may be banned because of its recognition, for example, containing the disclosure of commercial or other types of secrets, should be promptly restricted in access on the territory of our state. The Internet is also overloaded with a large amount of false information or information of an offensive nature, which requires legislative regulation in its distribution. Naturally, the above-mentioned problematic issues require the prompt adoption of appropriate measures by the state as a legislator.

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However, digitalization itself does not yet have its full, exhaustive subject for the legislative regulation, since this phenomenon in the territory of our state is still developing, progressive in nature, and it is impossible to adopt regulatory acts that successfully regulate this type of relations, relying only on current trends (Sidorova, 2020). The situation is complicated with the fact that sanctions for violation of information rights have their own basis in various legal sources, which makes the process of applying sanctions to offenders difficult and twofold and prevents the formation of a competent and comprehensive judicial practice.

Thus, it is worth emphasizing the need, first, to create an information code of the Russian Federation that would absorb the very disordered rules regulating public relations in the information sphere. In our opinion, this will simplify not only the process of applying sanctions for the judicial branch of government, but also indicate to the legislator the existing gaps in the law that need to be filled. First, the existing information rights in the Constitution of the Russian Federation (adopted 12.12.1993) are already the basis for the official creation and consolidation of information legislation as a full-fledged branch of law. Secondly, in connection with the above-mentioned clash of information rights, in our opinion, it is necessary to set specific boundaries for the distribution of each of them. This will also help to avoid various legal conflicts and possibly prevent illegal actions in the information sphere. Third, it is necessary to create a comprehensive activity of public authorities to prevent these types of offenses, as well as to timely adopt new legal acts that correspond to the developing relations in the field of information law.

It is necessary in the context of our research to focus on the Decree of the President of the Russian Federation of 06.03.1997 N 188 (ed.of 13.07.2015) "On approval of the list of confidential information" (1997). It fixes a list of information that has the confidentiality property. The restricted access mode is extended to personal data, documents containing the secret of investigation, the secret of legal proceedings, official secrets, medical, notary, lawyer secrets, as well as the secret of correspondence, telephone conversations, mail, telegraph or other messages, commercial secrets, information about the essence of the invention, utility model or industrial design (but only until they are officially published), information in the personal files of convicted persons, information, acts of other bodies and officials. In accordance with this decree, limited access to such information types may not be restricted, if it is established by law.

The Constitution of the Republic of Kazakhstan (adopted on August 30, 1995) (as amended on March 23, 2019) also contains provisions that enshrine the right of a person and a citizen to personal and family secrets, the secret of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. The legislator also indicates the possibility of removing such restrictions, but only if this is established by the republic legislation. This restricted access regime is not mentioned in the basic law of Kazakhstan as a state secret.

In Ukraine, the Constitution of Ukraine dated June 28, 1996 No. 254k/96-BP provides guarantees and protection of the correspondence secrecy, secrecy of telephone conversations, telegraph and other correspondence (Article 32). It follows from the text of the Constitution that state secrets are also a subject to protection (Article 32). Restricted access can be removed from this type of information by a court decision based on legally established circumstances, such as the prevention of a crime, the establishment of the truth in a criminal investigation, and only if the information cannot be obtained in any other ways. A special feature of the Constitution of Uzbekistan dated December 8, 1992 (as amended on September 4,

2019) is the consolidation of such a secret as bank secrecy (Article 36) together with the traditionally enshrined secrets of correspondence, telephone conversations and state secrets. In accordance with the Constitution, other types of secrets are also protected.

It should be noted that all CIS countries have adopted legal acts regulating confidential information with a limited access regime. For example, in Uzbekistan it is the Law of the Republic of Uzbekistan 07.05.1993 g № 848-XII "On protection of state secrets", according to which as those are considered data "of special importance, top secret and military secret, political, economic, scientific-technical and other information protected by the state and limited by special lists" (Article 1), such information became the property of the republic. State secrets of the republic are divided into several types: state secret, military secret and official secret (Article 3).

Commercial secret in the Republic of Uzbekistan is regulated by the Law of the Republic of Uzbekistan of September 11, 2014 no. ZRU-374 "On commercial secret", according to which it is understood as information that has commercial value in scientific, technical, technological, industrial, financial, economic and other areas "due to its unknown nature to third parties, to which there is no free access on a legal basis and the owner of this information takes measures to protect its confidentiality" (Article 3). This law establishes a list of requirements to this type of information, fixing a list of information that cannot be classified as a trade secret. Restricted access to personal data in Kazakhstan is regulated by the Law of the Republic of Kazakhstan No. 94-V "On personal data and its protection" dated may 21, 2013. Personal data is defined in it as "information relating to a specific or identifiable subject of personal data, recorded on electronic, paper and (or) other material media". The protection of such data is performed in compliance with the provisions of the basic law (the Constitution) that guarantees privacy, personal and family secrets, ensuring their integrity and safety, maintaining confidentiality, and preventing their illegal collection and processing.

7. Conclusion

The legal regime of information (the secrecy) is enshrined in all laws of the world without exception. In our country, this restricted access regime is enshrined in the Constitution of the Russian Federation (adopted 12.12.1993), and in a more detailed form – in the industrial legislation. The secret should be regarded as the legal regime of restricted access to certain kinds of information. It is a combination of legal means reflected in the legislative acts of different countries. Sometimes the names and content of these regimes are not identical in different national legislations, which can be determined by the legal traditions of individual countries. Not the least role in the formation of the institution of secrecy was played and continues to be played by ideology spread on the territory of individual states, as well as the economic development level. Despite numerous differences, no state has ignored this area, trying to maintain a balance between human rights and the interests of the state, society, and business.

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